THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROBERT F. COOPER	)	
Employee	)	
	)	OEA Matter No.: 1601-0161-89R98
v.	)	
	)	Date of Issuance: November 13, 2008
D.C. METROPOLITAN POLICE DEPARTMENT	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Robert Cooper ("Employee") was a police officer with the D.C. Metropolitan Police Department ("Agency"). During his probationary period, Agency removed Employee from his position. Following successful litigation challenging his removal from employment, Employee began a reinstatement physical. When the results of the reinstatement physical could not be found, Employee began a second reinstatement physical on January 7, 1987.

As part of the physical, Employee was asked to provide a urine sample. According to Agency, Employee's urine tested positive for the presence of marijuana.

On April 24, 1987 Agency notified Employee of its proposal to remove him. Employee then had a two day hearing in 1988 before a Police Trial Board ("PTB"). The PTB affirmed Agency's action and the removal took effect on March 11, 1989.

On March 27, 1989 Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). Employee argued before the Administrative Judge that Agency's action should be reversed because, according to Employee, the test results are incorrect due to Agency's mishandling of his urine sample. Employee arrived at this conclusion based on the chain-of-custody form accompanying his urine sample. The form reveals that four agency employees handled Employee's sample. Each of those four employees signed the chain-of-custody form, dated it, and next to his or her signature, wrote the reason for handling the sample. Those four signatures were properly authenticated. However, a fifth entry appearing on the chain-of-custody form was not signed by the person whose initials appear beside the entry. Therefore, that signature was not properly authenticated.

The Administrative Judge recognized the discrepancy within the chain-of-custody. She stated that the person who made the fifth entry on the form "did not follow standard operating procedures [and that this] created the opportunity for tampering with the sample."[1] She concluded, however, that "Agency took 'acceptable precautions' to 'maintain the evidence in its original state'" and thus "Agency has met its burden of proving that the urine tested was Employee's."[2] In an Initial Decision issued June 23, 1993, the Administrative Judge upheld Agency's removal action.

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[1] *Initial Decision* at 9.
[2] *Id.*

Employee then filed a Petition for Review. He argued before us that he had newly discovered evidence to establish that the evidence relied upon by Agency was falsified and that would also invalidate the chain-of-custody. In our review of the case, we determined that a valid chain-of-custody had not been established and that the Administrative Judge's reliance upon a presumption of regularity in the drug testing process was misplaced. For these reasons in an Opinion and Order on Petition for Review issued January 29, 1998 we remanded this case to the Administrative Judge with instructions to "review and reopen this matter with regard to the issue of this irregularity in the chain of custody."[3]

On remand the Administrative Judge stated that "the presumption of regularity of Agency's operations was rebutted by evidence of irregularity in the transmittal sheet documenting the movement of Employee's urine sample. Once the irregularity in the transmittal sheet was identified, it was for Agency to produce evidence to explain it."[4] She went on to state that "Agency's drug testing personnel are required to personally and completely account for all of their actions in handling a urine specimen by recording them on the chain of custody form. Agency failed to do so. Therefore, the evidence is rendered unreliable."[5] Thus in an Initial Decision issued March 6, 2006 the Administrative Judge held that Agency's removal action was not supported by substantial evidence and accordingly, must be reversed.

Agency has timely filed a Petition for Review. Agency argues that there is not substantial evidence to support the Administrative Judge's ruling. Contrary to Agency's argument, we believe there is substantial evidence in the record to support the

[3] *Opinion and Order on Petition for Review* at 9.
[4] *Initial Decision* at 5.
[5] *Id.*

Administrative Judge's finding that Agency failed to prove its case. Substantial evidence is defined as any "'relevant evidence such as a reasonable mind might accept as adequate to support a conclusion.'" *Mills v. District of Columbia Dep't of Employment Servs.*, 801 A.2d 325, 328 (D.C. 2003 (quoting *Black v. District of Columbia Dep't of Employment Servs.*, 801 A.2d 983 (D.C. 2002)). As long as there is substantial evidence in the record to support the decision, the decision must be affirmed "notwithstanding that there may be contrary evidence in the record (as there usually is)." *Ferreira v. District of Columbia Dep't of Employment Servs.*, 667 A.2d 310, 312 (D.C. 1995).

It is not necessary that we reexamine herein every point which Agency believes to be decisive to the outcome of its case. At the outset of this appeal Agency enjoyed the presumption, albeit a rebuttable presumption, that there were no irregularities in its chain-of-custody. Employee, however, presented evidence to rebut that presumption. The burden of proof then shifted to Agency to present evidence of an intact, reliable chain-of-custody with respect to the testing of Employee's urine sample. Agency did not present such evidence. Based on all that is within this record, we find that there is substantial evidence to support the Administrative Judge's ruling. For this reason we must deny Agency's Petition for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED.**

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.